

In light of the current public health crisis and the Federal, State and County Emergency Declarations, and in accord with the provisions of Sec. 610.020, RSMo., the Board of Aldermen recognizes that it would be dangerous and impractical, if not impossible, for its meeting to be physically accessible to the public. The Board also recognizes the need for the public's business to be attended to in order to protect the public health, safety and welfare. In order to balance both the need for continuity of government and protection of the health and safety of our residents, business persons and employees, this meeting of the Board of Aldermen will not be open to public attendance in person. The meeting will be accessible by the public in real time ONLY by following the instructions in the box below.

You are invited to a Zoom webinar.

When: February 8, 2022; 6:15 p.m. Discussion Session; 7:00 p.m. Regular Meeting

Topic: 02/08/2022 Board of Aldermen Meeting.

Join from a PC, Mac, iPad, iPhone or Android device: <https://us02web.zoom.us/j/84455854156>

Or One tap mobile:

+19292056099, 84455854156# US (New York)

+13017158592, 84455854156# US (Washington DC)

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782
or +1 346 248 7799

Webinar ID: 844 5585 4156

International numbers available: <https://us02web.zoom.us/j/84455854156>

Persons interested in making their views known on any matter on the agenda should send an email with their comments to the City Clerk at jfrazier@claytonmo.gov. All comments received will be distributed to the entire Board before the meeting.

Thank you for your understanding and patience as we all try to get through these difficult and dangerous times.

CITY OF CLAYTON BOARD OF ALDERMEN
DISCUSSION SESSION – 6:15 P.M.
TUESDAY, FEBRUARY 8, 2022
VIRTUAL ZOOM MEETING
CLAYTON, MO 63105

1. Clayton Equity Commission (CEC) ex-officio members.
 2. Plan Commission conceptual reviews.
-

CITY OF CLAYTON BOARD OF ALDERMEN
TUESDAY, FEBRUARY 8, 2022
VIRTUAL ZOOM MEETING
CLAYTON, MO 63105
7:00 P.M.

ROLL CALL

MINUTES – January 25, 2022

PUBLIC REQUESTS & PETITIONS

CITY MANAGER REPORT

1. Ordinance – To approve an easement for construction of certain improvements related to the Bemiston Place project. (Bill No. 6888)
2. Ordinance – To approve an easement for the installation and maintenance of public electrical infrastructure for Clarendale Clayton. (Bill No. 6889)
3. Ordinance – To approve the Shaw Park Tennis Management Service agreement. (Bill No. 6890)

EXECUTIVE SESSION

1. Legal issues and negotiation (pursuant to Sections 610.021(1), (12) RSMO)

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

DISCUSSION ITEM

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
DATE: FEBRUARY 8, 2022
SUBJECT: COMMUNITY EQUITY COMMISSION EX-OFFICIO MEMBERS

The Ordinance establishing the Community Equity Commission (CEC) states “At their discretion, the Board of Aldermen may add additional ex-officio (non-voting) positions as it deems necessary.” Since its inception, the CEC has operated with ex-officio members representing the following groups:

- School District of Clayton
- Washington University in St. Louis
- St. Louis County Government
- Clayton Chamber of Commerce
- Religious Organizations

All of these entities, with the exception of religious organizations, select their own representatives. The ex-officio member representing the faith community recently resigned from the position and there is no process to appoint a replacement, as there is no centralized group to coordinate the various religious organizations in Clayton.

To assist the Board of Aldermen in determining how this position should be appointed, the CEC discussed selection criteria for the next religious representative. The suggested criteria include the following:

- Leader within their faith group (even if administrative)
- Demonstrated belief in the mission of the City and CEC
- Desire and ability to coordinate the local faith community in Diversity, Equity, and Inclusion (DEI) matters and engagement
- Representative should be a resident or work for a religious organization in Clayton

The Board of Aldermen should discuss and determine whether a faith community ex-officio member should be appointed to fill the vacancy, and if so, how the selection should be made.



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

DISCUSSION ITEM

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
DATE: FEBRUARY 8, 2022
SUBJECT: PLAN COMMISSION CONCEPTUAL REVIEWS

For several years the City of Clayton Plan Commission has offered developers the opportunity to have a conceptual review prior to formal application submittal. The purpose of the meeting is to give initial feedback on the suitability of a development concept for zoning approval. This is a tremendous courtesy to the development community because input can be solicited without the expenses associated with the fully engineered site plans and complete architectural drawings required for a formal submittal. Because detailed plans have not been produced at the time of a conceptual review, the discussion is typically more general than a formal review.

There is no reference to conceptual reviews in the Clayton Code of Ordinances. As such, there are no standard review procedures for the Plan Commission to follow. Following a recent conceptual review, concern was expressed by residents that the conceptual review does not have a public comment component.

There is no notification requirement for conceptual reviews, and they are not public hearings. As a courtesy, an agenda is sent to property owners within 200 feet of a subject property prior to the meeting. The agenda is often received by residents a day or two before the meeting because they are not sent until the meeting packet is complete. If there is a delay with US Mail, it could be received after the meeting occurs.

It should be noted that residents have multiple opportunities to participate in the discussion for a PUD project (most concept reviews are for PUD projects). There is a required Community Conference prior to application. Public hearings are then held at the Plan Commission and Board of Aldermen after a formal application is received.

The Board of Aldermen is being asked to affirm that conceptual reviews should be offered for projects in the future. If so, the Board needs to determine if a conceptual review should act as a closed, working conversation between the Plan Commission and developer; or if conceptual reviews should have a public comment component and act as a preliminary public hearing. If the Board of Aldermen desires a public comment component, the notification process would also need to be modified to mirror that of a public hearing. While an ordinance is not necessary for conceptual review procedures, clear direction should be given to the Plan Commission and its Chair.

THE CITY OF CLAYTON

Board of Aldermen Strategic Discussion Session
Virtual Zoom Meeting
January 25, 2021
7:00 p.m.

Minutes

NOTE: In accord with the provisions of Section 610.015, RSMo., and multiple declarations of emergency at every level of government, and the prohibition on gatherings of 10 or more persons due to the Coronavirus pandemic, normal requirements for voting in the Board meeting were suspended. Accordingly, votes were taken as if all Board members were physically present and in attendance at the meeting.

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Rich Lintz, Ira Berkowitz, Bridget McAndrew, Susan Buse, Becky Patel, and Gary Feder.

Mayor Harris
City Manager Gipson
City Attorney O'Keefe

**Motion made by Alderman McAndrew to approve the January 11, 2022 minutes.
Alderman Berkowitz seconded.**

Motion to approve the minutes passed unanimously on a voice vote.

PUBLIC REQUESTS AND PETITIONS

None

A PUBLIC HEARING AND A RESOLUTION TO CONSIDER APPROVING A CONDITIONAL USE PERMIT FOR A RESTAURANT LOCATED AT 6451 CLAYTON ROAD (DEMUN POINTE)

Mayor Harris opened the public hearing and requested proof of publication.

City Manager Gipson reported that Rick Hetzel, Restaurant Manager, requested a conditional use permit for the operation of a casual restaurant at 6451 Clayton Road (DeMun Pointe), Unit 103. The restaurant space measures approximately 1,400 square feet. The proposed hours of operation are 7AM-8PM, Monday through Friday, and 8AM-6PM, Saturday and Sunday. The business will occupy a portion of the first floor and is in the center of the building. The restaurant will have a total of 28 seats, 14 seats indoors and 14 seats in the proposed outdoor dining area.

Parking spaces will be available in the building's garage. Deliveries to the restaurant through the rear entrance of the lease space during normal hours of operation.

The Plan Commission considered this request at its January 4, 2022, meeting and voted unanimously to recommend approval.

Mayor Harris closed the public hearing.

Motion made by Alderman Lintz to approve Resolution No. 2022-03, a Conditional Use Permit for RLH Fresh Healthy #3 LLC d/b/a Fresh Healthy Cafe located at 6451 Clayton Road (DeMun Pointe). Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

AN ORDINANCE TO CONSIDER APPROVING THE SALE OF GENERAL OBLIGATION REFUNDING BONDS – SERIES 2022 – 2ND READING

City Manager Gipson reported that the competitive bond sale occurred today at 10:00 a.m. and was very successful. The City received bids from 4 bidders, with three bids being quite close in amount. The bids are evaluated based on the lowest True Interest Cost (TIC) which provides the City with the lowest cost of total debt service. The final sale amount was \$10,180,000 which will provide the City \$1,016,495 in savings over the remaining life of the bonds. The average annual cost savings is around \$85,000 per year over the next 12 years, which is less than expected, but still significant. The successful bidder was Robert W. Baird & Co., Inc.

The ordinance and exhibits have been updated to reflect the results of the sale and a redlined version is attached. The ordinance will need to be amended for these changes prior to a final vote to approve the sale of the bonds.

Recommendation is to amend the bill draft version labeled Bill # 6876.1 and to hold a second and final reading of an ordinance authorizing the sale, issuance, and delivery of General Obligation Refunding bonds in the amount of \$10,180,000.

Karen Dilber, Director of Finance, was in attendance to answer questions.

Mark Grimm, Gilmore & Bell, and Todd Goffoy, Piper Sandler were in attendance to answer questions.

Motion made by Alderman Lintz to amend Bill No. 6876 to Bill No. 6876.1, that reflects the results of the sale as outlined. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6876.1, to approve the sale of the General Obligation Refunding Bonds Series 2022 to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6876.1, second reading, an Ordinance Authorizing and Directing the Issuance, Sale and Delivery of General Obligation Refunding Bonds, Series 2022, of the City of Clayton, Missouri; and Approving Certain Documents and Authorizing Certain Other Actions in Connection Therewith by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman

Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6740 of the City of Clayton.

AN ORDINANCE TO CONSIDER APPROVING AN ASSIGNMENT AND ASSUMPTION OF REAL ESTATE TRANSACTION RIGHTS RELATING TO THE REDEVELOPMENT OF 227 S. CENTRAL AVENUE

City Manager Gipson reported that the City and HB Clayton LLC (the “Developer”) entered into a Purchase and Sale Agreement dated October 5, 2017, relating to the redevelopment of the former Clayton Police Headquarters, located at 227 S. Central Avenue, into a hotel. The Purchase and Sale Agreement was first amended on October 11, 2018, and again on May 14, 2019.

The Developer assigned it rights to Concord HB K Clayton, LLC on June 25, 2019, and the City entered into an assignment and assumption agreement with the two entities by Ordinance 6602.

The Developer and Concord HB K Clayton, LLC now desire to convey the property to a different entity, Concord HB K Clayton Owner LLC, and have requested that the City consent to the assignment pursuant to an Assignment and Assumption of Purchase and Sale, and Real Estate Transaction Rights among the City, Concord HB K Clayton LLC, and Concord HB Clayton Owner LLC.

The Developer is in the final stages of securing debt and equity financing for the project as it begins construction and wishes to contribute its assets to the new entity which will be the landowner, borrower on the debt financing, and will be in the chain of ownership for limited investors. The current members of Concord HB Clayton LLC will retain ownership in and control of the deal.

Staff has negotiated the Assignment and Assumption with the other parties and supports their approval.

Gary Carter, Director of Economic Development, was in attendance to answer questions.

Jim Fredericks, Attorney and Sam Koplar, Koplar Properties, were in attendance to answer questions.

Alderman Lintz introduced Bill No. 6882, to approve Assignment and Assumption of Real Estate Transaction Rights relating to the redevelopment of 227 S. Central Avenue to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6882, first reading, an Ordinance of the City of Clayton, Missouri, Approving an Assignment and Assumption of Real Estate Transaction Rights Agreement by and Among the City, Concord HB K Clayton LLC and Concord HB K Clayton Owner, LLC and Authorizing Certain Actions in Connection Therewith by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6882 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6882, to approve Assignment and Assumption of Real Estate Transaction Rights relating to the redevelopment of 227 S. Central Avenue to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6882, second reading, an Ordinance of the City of Clayton, Missouri, Approving an Assignment and Assumption of Real Estate Transaction Rights Agreement by and Among the City, Concord HB K Clayton LLC and Concord HB K Clayton Owner, LLC and Authorizing Certain Actions in Connection Therewith by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6741 of the City of Clayton.

AN ORDINANCE TO CONSIDER APPROVING FOUR (4) USE AND MAINTENANCE AGREEMENTS (INDIVIDUALLY) WITH ELIZABETH WACK, AMY AND MARK ROSEN, VIJAYAM AND BALA VANUKURU, AND TAYLOR AND ELIZABETH HARBISON AND THE CITY OF CLAYTON FOR THE RIGHT-OF-WAY ADJACENT TO WYDOWN PARK

City Manager Gipson reported that the City of Clayton is preparing to replace the fence along the northern and eastern sides of Wydown Park and, in doing so, commissioned a boundary survey of the property. This survey confirmed that the current fence was not installed along the property line of the park. Of the properties adjoining the park, four have a portion of city property on their side of the fence. The City has met with the residents and agreed that we would reinstall the fence in its current location with the exception of one property where the corner of the fence intrudes on that property; the City intends to pull that section of fence back onto park property.

Toni Siering, Director of Parks and Recreation was in attendance to answer questions.

BILL NO. 6883

Alderman Lintz introduced Bill No. 6883, to approve a Use & Maintenance Agreement with Elizabeth Wack, property owner of 7611 Wydown Boulevard to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6883, first reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6883 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6883, to approve a Use & Maintenance Agreement with Elizabeth Wack, property owner of 7611 Wydown Boulevard to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6883, second reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6742 of the City of Clayton.

BILL No. 6884

Alderman Lintz introduced Bill No. 6884, to approve a Use & Maintenance Agreement with Amy and Mark Rosen, property owner of 7628 Walinca Terrace to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6884, first reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6884 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6884, to approve a Use & Maintenance Agreement with Amy and Mark Rosen, property owner of 7628 Walinca Terrace to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6884, second reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6743 of the City of Clayton.

BILL No. 6885

Alderman Lintz introduced Bill No. 6885, to approve a Use & Maintenance Agreement with Vijayam and Bala Vanukuru, property owners of 7632 Walinca Terrace to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O’Keefe reads Bill No. 6885, first reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6885 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6885, to approve a Use & Maintenance Agreement with Vijayam and Bala Vanukuru, property owners of 7632 Walinca Terrace to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6885, second reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6744 of the City of Clayton.

BILL No. 6886

Alderman Lintz introduced Bill No. 6886, to approve a Use & Maintenance Agreement with Taylor and Elizabeth Harbison, property owners of 7622 Walinca Terrace to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6886, first reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6886 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6886, to approve a Use & Maintenance Agreement with Taylor and Elizabeth Harbison, property owners of 7622 Walinca Terrace to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6886, second reading, an Ordinance Providing for the Execution of a Use and Maintenance Agreement for Right-of-Way Adjacent to Wydown Park by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6745 of the City of Clayton.

AN ORDINANCE TO CONSIDER APPROVING A CONTRACT WITH MISSOURI PETROLEUM PRODUCTS COMPANY, LLC FOR THE FY2022 MICROSURFACING PROJECT

City Manager Gipson reported that the Public Works Department is requesting approval of a construction contract for the FY2022 Microsurfacing Project with Missouri Petroleum Products Company, LLC. This project includes the application of microsurfacing with fiber reinforcement on the roads in the Bemiston, Hanley Place/Maryland Terrace, Northmoor, Skinker Heights, and Hi-Pointe/DeMun neighborhoods. Additional pay items include pavement markings and traffic control. Work is expected to take place in the spring or summer of 2022 and last approximately 2-3 weeks.

Matt Malick, Director of Public Works, was in attendance to answer questions.

Alderman Lintz introduced Bill No. 6887, to approve a contract with Missouri Petroleum Products Company, LLC for the FY22 Microsurfacing Project to be read for the first time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6887, first reading, an Ordinance Approving a Contract with Missouri Petroleum Products Company, LLC for the FY2022 Microsurfacing project by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Lintz that the Board give unanimous consent to consideration for adoption of Bill No. 6887 on the day of its introduction. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

Alderman Lintz introduced Bill No. 6887, to approve a contract with Missouri Petroleum Products Company, LLC for the FY22 Microsurfacing Project to be read for the second time by title only. Alderman Berkowitz seconded.

City Attorney O'Keefe reads Bill No. 6887, second reading, an Ordinance Approving a Contract with Missouri Petroleum Products Company, LLC for the FY2022 Microsurfacing project by title only.

The motion passed on a roll call vote: Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman Buse – Aye; Alderman McAndrew – Aye; Alderman Patel – Aye; Alderman Feder – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6746 of the City of Clayton.

A RESOLUTION TO CONSIDER ADOPTING THE CITY OF CLAYTON TRAFFIC CALMING PROGRAM

City Manager Gipson reported that the City of Clayton seeks to establish a process that considers public input, education, data, and traffic calming techniques to maintain maximum mobility and access for all users of the streets in residential areas and generally reduce the negative impacts of motor vehicles.

In the past, the City of Clayton has fielded neighborhood complaints relating to residential traffic concerns on an individual basis without a defined process. Many times, the staff response followed a similar process as the nature of the concerns were similar, but this was not a documented process that the public could review. The purpose of this program is to formalize a uniform response process, provide guidance and information to residents on the process, and identify projects for future funding.

The proposed Traffic Calming Program was developed utilizing staff knowledge of the community, examples from surrounding communities, as well as industry standards for analysis and traffic calming measures

Matt Malick was in attendance to answer questions.

P.J. McDaniel, resident, was in attendance and addressed the Board regarding Audubon and the next steps.

Josh Dubinsky, resident, was in attendance and addressed the Board regarding the speed tables.

Motion made by Alderman Lintz to approve Resolution No. 2022-04, a Traffic Calming Program. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

A RESOLUTION TO ADOPT A SELECTION PROCESS FOR MUNICIPAL JUDGE

City Manager Gipson reported that on December 14, 2021, the Board of Aldermen discussed several Clayton Community Equity Commission (CEC) recommendations related to the selection process and Charter provisions for the Municipal Judge. The proposed resolution will put a formal selection process in place.

Motion made by Alderman Lintz to approve Resolution No. 2022-05, a Selection Process for the Municipal Judge. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

FISCAL YEAR 2021 4TH QUARTER DRAFT FINANCIAL REPORT

Karen Dilber, Director of Finance provided the Board with a summary report of the FY2021 4th Quarter Financial report.

Motion made by Alderman Feder (City Attorney O'Keefe) that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman Berkowitz seconded.

The motion passed unanimously on a voice vote.

The meeting adjourned at 8:38 p.m.

Mayor

ATTEST:

City Clerk

DRAFT



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
MATT MALICK, P.E., DIRECTOR OF PUBLIC WORKS
DATE: FEBRUARY 8, 2022
RE: ORDINANCE - EASEMENT TO FACILITATE CONSTRUCTION OF CERTAIN
IMPROVEMENTS RELATED TO THE BEMISTON PLACE REDEVELOPMENT PROJECT

Bemiston Place, LLC has requested both aerial and subsurface easements to facilitate construction of their new development adjacent to City rights-of-way associated with the consolidated lot of Bemiston Place as recorded in Plat Book 369, Pages 525-526 in the land records of St. Louis County, Missouri. The easements are: (a) temporary aerial easements for construction cranes within the site with an operational radius that extends into air space above City rights-of-way, and (b) permanent subsurface easements for the placement of tieback and shoring walls. These easements are illustrated in the attached Exhibits in the Easement Agreement.

Both Public Works and the City Attorney have reviewed and approved the attached easement titled Tieback and Crane Easement Agreement

STAFF RECOMMENDATION: To approve the ordinance authorizing execution of the Aerial and Subsurface Easement Agreement.

BILL NO. 6888

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN EASEMENT TO FACILITATE CONSTRUCTION
OF CERTAIN IMPROVEMENTS RELATED TO THE BEMISTON PLACE
REDEVELOPMENT PROJECT**

WHEREAS, the Board of Aldermen finds that temporary tower crane and permanent subsurface tiebacks will not directly interfere with existing utility rights-of-way users as well as the City of Clayton and the public's use of the rights-of-way; and

WHEREAS, these features will be located, in part, over and beneath rights-of-way and property owned by the City of Clayton, and it is desired that the City enter into the Easement Agreement hereinafter referenced in order to allow such construction devices to be constructed and maintained as hereinafter provided;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:

Section 1.

The Board of Aldermen hereby approves and authorizes execution, on behalf of the City of Clayton, of an Easement Agreement to allow construction, installation and maintenance of temporary tower cranes and permanent subsurface tiebacks in association with the Bemiston Place Redevelopment Project, said agreement to be in substantial conformity with the agreement attached hereto, including Exhibits A, B, C, and D and incorporated herein by this reference. The Mayor, City Manager, and other appropriate City officials are hereby authorized to execute the Easement Agreement and such additional documents and take any and all actions necessary, desirable, convenient, or prudent in order to carry out the intent of this legislation.

Section 2.

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed this 8th day of February 2022.

Mayor

Attest:

City Clerk

(Space above reserved for Recorder of Deeds)

Title of Document: Tieback and Crane Easement Agreement

Date of Document: Effective as of _____, 2022

Grantor: THE CITY OF CLAYTON, MISSOURI, a Missouri municipal corporation

Grantor's Address: 10 N. Bemiston Ave.
Clayton, Missouri 63105

Grantee: BEMISTON PLACE LLC, a Missouri limited liability company

Grantee's Address: 13075 Manchester Road, Suite 250
St. Louis, Missouri 63131
Attn: Steve Brown

Property Addresses: 26, 30, 32, 38, N. Central Avenue, 7800, 7820 Maryland Ave, 9 N. Bemiston Ave., St. Louis, Missouri 63105

Legal descriptions: See Exhibit A located on page 8

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 RSMo 2001 of the Missouri Recording Act. The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached document. In the event of a conflict between the provisions of the attached document and the provisions of this cover page, the attached document shall prevail and control.

After recording, please return document by mail to:
Realty Law Partners, PC
231 S. Bemiston, Suite 710
St. Louis, Missouri 63105
Attn: Diane M. Mispagel, Esq.

THIS TIE BACK AND CRANE EASEMENT AGREEMENT (this "**Agreement**") is entered into effective as of this ____ day of _____, 202__ (the "**Effective Date**"), by and between by and between THE CITY OF CLAYTON, MISSOURI, a Missouri municipal corporation ("**Clayton**"), and BEMISTON PLACE LLC, a Missouri limited liability company ("**Bemiston**").

RECITALS

A. WHEREAS, Bemiston owns that certain parcel of real property located in the City of Clayton, Missouri, legally described on Exhibit A attached hereto (the "**Property**"); and

B. WHEREAS, Clayton is the owner of the following roadways located in the City of Clayton, Missouri that have been dedicated for public use: (i) Maryland Avenue; (ii) North Bemiston Avenue; (iii) North Central Avenue; (iv) that certain public alley located to the south of the Property between the eastern right of way line of North Central Avenue and the western right of way line of North Bemiston Avenue (the "**Bemiston Place Alley**") and (v) that certain public alley located to the south of the Bemiston Place Alley between the southern line of the Bemiston Place Alley and the northern line of Forsyth Boulevard (collectively, the "**Public Roadways**"); and

C. WHEREAS, Bemiston desires to develop improvements upon the Property (the "**Project**"); and

D. WHEREAS, Bemiston desires to operate one or more construction cranes (the "**Cranes**") for the purposes of constructing the Project within the airspace over the Public Roadways in the areas of the Public Roadways shown cross-hatched and labeled "Crane Easement" on Exhibit B attached hereto (the "**Air Rights Easement Area**"); and

E. WHEREAS, Bemiston desires to receive from Clayton, and Clayton desires to grant to Bemiston, a non-exclusive easement appurtenant to the Property to, through, and within the airspace above the Air Rights Easement Area, at an elevation beginning not less than ten feet (10') above the highest improvements located within the Air Rights Easement Area for the purpose of operating the Cranes in connection with the construction of the Project, all subject to the terms and conditions set forth below; and

F. WHEREAS, Bemiston desires to construct permanent shoring walls, install below-grade permanent tiebacks, soil anchors, and/or use similar methods and techniques for stabilizing the improvements comprising the Project (collectively, "**Tieback Anchors**") within the areas of the Public Roadways hatched on Exhibit C and labeled as "Tie-Back and Shoring Easement") (the "**Tieback and Shoring Easement Area**") in connection with the construction of the Project; and

G. WHEREAS, Bemiston desires to receive from Clayton, and Clayton desires to grant to Bemiston, a non-exclusive easement appurtenant to the Property for the purpose of installing Tieback Anchors located below grade within the Tieback and Shoring Easement Area in connection with the construction of the Project, all subject to the terms and conditions set forth below.

NOW THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Air Rights Easement.** Clayton hereby declares and grants for the benefit of Bemiston a temporary non-exclusive easement appurtenant to the Property to, through, and within the Air Rights Easement Area for the purpose of operating Cranes for the construction of the Project by Bemiston and/or its contractors and/or subcontractors (such easement the "**Crane Air Rights Easement**"). Bemiston shall comply with all applicable laws relating in any manner whatsoever to the Cranes and the operation thereof within the Air Rights Easement Area.

2. **Tieback and Shoring Easement.** Clayton hereby declares and grants for the benefit of Bemiston a perpetual, non-exclusive tieback and shoring wall easement appurtenant to the Property under and within the Tieback and Shoring Easement Area for the purpose of Bemiston and/or its contractors and/or subcontractors constructing and/or installing permanent shoring walls and installing Tieback Anchors located below-grade within the Tieback and Shoring Wall Easement Area in connection with the construction of the Project (such easement the "**Tieback and Shoring Easement**"). Bemiston and/or its contractors and/or subcontractors may also install the foundation for any Crane within the Tieback and Shoring Easement Area ("**Crane Foundations**").

3. **Duration.** Except as set forth below, the easements, covenants, conditions and restrictions contained in herein shall create covenants running with the land, and shall be binding upon any and all owners of the Public Roadways and the Property and their respective legal representatives, heirs, successors and assigns for the duration stated below.

- a) The Crane Air Rights Easement shall expire on the date which is the first to occur of (i) the date on which the Project is completed and the Cranes have been removed from the Property; and (ii) the December 31 of the third (3rd) full calendar year occurring after the effective date hereof.
- b) The Tieback and Shoring Easement shall continue so long as any building(s) constructed as part of the Project [or any replacement building(s) which are constructed using such easement area(s)] shall remain in place. If the Project is destroyed and no buildings are reconstructed within three (3) years thereafter or if the Project is demolished and no buildings are reconstructed within three (3) years thereafter, Bemiston's or its successor's right to install Tieback Anchors and Shoring in the Tieback and Shoring Easement Area shall expire; provided, however, that upon expiration of the Tieback and Shoring Easement Bemiston or its successor may abandon and leave in place permanently any Tieback Anchors and Shoring previously installed in the easement area, provided that the structural integrity of the Public Roadways impacted thereby shall be restored to at least the condition it was in prior to the construction activities of Bemiston as determined in the reasonable judgment of Clayton.

4. **Construction of Improvements.** Clayton covenants and agrees that it will not construct improvements upon the Public Roadways that materially and adversely affect Bemiston's use and enjoyment of the rights granted herein; provided, however, that after the completion of the Project,

the Tieback Anchors will remain in the subsurface of the Public Roadways permanently. Clayton agrees that the Bemiston may leave portions of the Crane Foundation underneath the surface of the Tieback and Shoring Easement Area permanently after restoring the surface of such Tieback and Shoring Easement Area as required hereunder. After the completion of the Project, Bemiston shall (i) repair any damage caused to the Public Roadways in the exercise of Bemiston's easement rights hereunder, and (ii) restore the Public Roadways to at least the condition they were in prior to the construction activities related to the Project as determined in the reasonable judgment of Clayton, with the exception of leaving the Tieback Anchors and any subsurface Crane Foundation in place permanently, provided the structural integrity of the Public Roadways are restored in connection therewith. Nothing in paragraphs 3(b) and/or 4 is intended to place responsibility on Bemiston for road repairs or improvements due to normal wear and tear. Road repair caused wholly or primarily by Bemiston's construction activity shall not be considered normal wear and tear.

5. **Indemnification.** Bemiston agrees to indemnify, defend, and hold harmless Clayton and its officials and officers (the "**Indemnified Parties**") from and against any loss, claim, suit, cost or expense (including reasonable attorneys' fees) for death or bodily injury to persons and for damage to property to the extent caused, in connection with the exercise of the easement rights granted herein, by the acts or omissions of Bemiston, provided that the Indemnified Party tenders defense of any claim or suit indemnified hereunder to Bemiston in sufficient time to avoid prejudice, and Bemiston shall be entitled to defend the same with counsel of its selection and reasonably acceptable to the Indemnified Party. The provisions of this Section shall survive the termination of this Agreement and continue in effect indefinitely.

6. **Insurance.** During any period when any work is being conducted in the Air Rights Easement Area and/or the Tieback and Shoring Easement Area, Bemiston will or will cause the contractor or subcontractor performing such work to have in full force and effect, at no expense to Clayton, the insurance coverages described in Exhibit D ("**Insurance Coverages**"). Certificates of Insurance showing the Insurance Coverages shall be provided to Clayton prior to the commencement of any such work. In addition, Bemiston will or will cause the applicable contractor or subcontractor to furnish certificates of insurance at the request of Clayton from time-to-time. The certificates of insurance, provided such insurer agrees, will state that at least thirty (30) days' prior written notice will be given to Clayton before any policy is canceled (or at least 10 days' prior written notice in the event of cancellation due to non-payment). Bemiston will or will cause the applicable contractor or subcontractor to give written notice to Clayton as soon as it receives written notice of cancellation from any of its insurance carriers. Each certificate of insurance must clearly designate the name of the Project.

7. **Notices.** Any notice required or permitted to be given by any party upon the other shall be given by certified mail, return receipt requested, by nationally recognized overnight courier, or by personal delivery addressed as follows:

If to Clayton:

City of Clayton,
Missouri 10 N. Bemiston Avenue
Clayton, Missouri 63105
Attn: City Manager

With a copy to: Curtis, Heinz, Garrett & O'Keefe, P.C.
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Attn: Kevin O'Keefe

If to Bemiston: Bemiston Place LLC
c/o Balke Brown Transwestern
13075 Manchester Road, Suite 250
St. Louis, Missouri 63131
Attn: Steve Brown

With a copy to: Realty Law Partners, PC
231 S. Bemiston, Suite 710
St. Louis, Missouri 63105
Attn: Diane M. Mispagel, Esq

All notices shall be deemed given when received if sent by United States certified mail, return receipt requested, one (1) business day following deposit if delivered to any overnight courier guaranteeing next business day delivery, and on the same day as delivered if personally delivered. Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

8. **Miscellaneous.**

a. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

b. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

c. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

d. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

e. This Agreement is intended to run with the land and shall be binding upon and inure to the benefit of any and all owners of the Public Roadways and the Property and their respective legal representatives, heirs, successors and assigns, subject to the limitations on duration of certain

easements as set forth in Section 4 above. Whenever a transfer of the ownership of the Property shall occur, the transferor thereof shall have no further liability hereunder for any breach of this Agreement occurring after the date of such transfer.

f. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. No right, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

[Signatures contained on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

BEMISTON PLACE, LLC
a Missouri limited liability company

By: _____
Steven A. Brown, Manager

State of Missouri)
) ss
_____ of *St. Louis*)

On this ____ day of _____, 202__, before me personally appeared Steven A. Brown, to me known and who, being by me duly sworn, did say that he is the Manager of Bemiston Place LLC, a Missouri limited liability company, and that he executed the foregoing instrument in behalf of said limited liability company with the full authority to do so, and said Steven A. Brown acknowledged said instrument to be the free act and deed of limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires: _____

*The City of Clayton Signature Page to
Air Rights Easement and Sidewalk Easement Agreement*

THE CITY OF CLAYTON, MISSOURI,
a Missouri municipal corporation

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me, a Notary Public in and for the
County and State aforesaid, this _____ day of _____ 202__, by
_____, the duly appointed _____ of THE CITY OF
CLAYTON, MISSOURI, a Missouri municipal corporation, who executed the foregoing instrument in said
capacity and on behalf of said city.

Notary Public

My commission expires: _____

EXHIBIT A

The Property

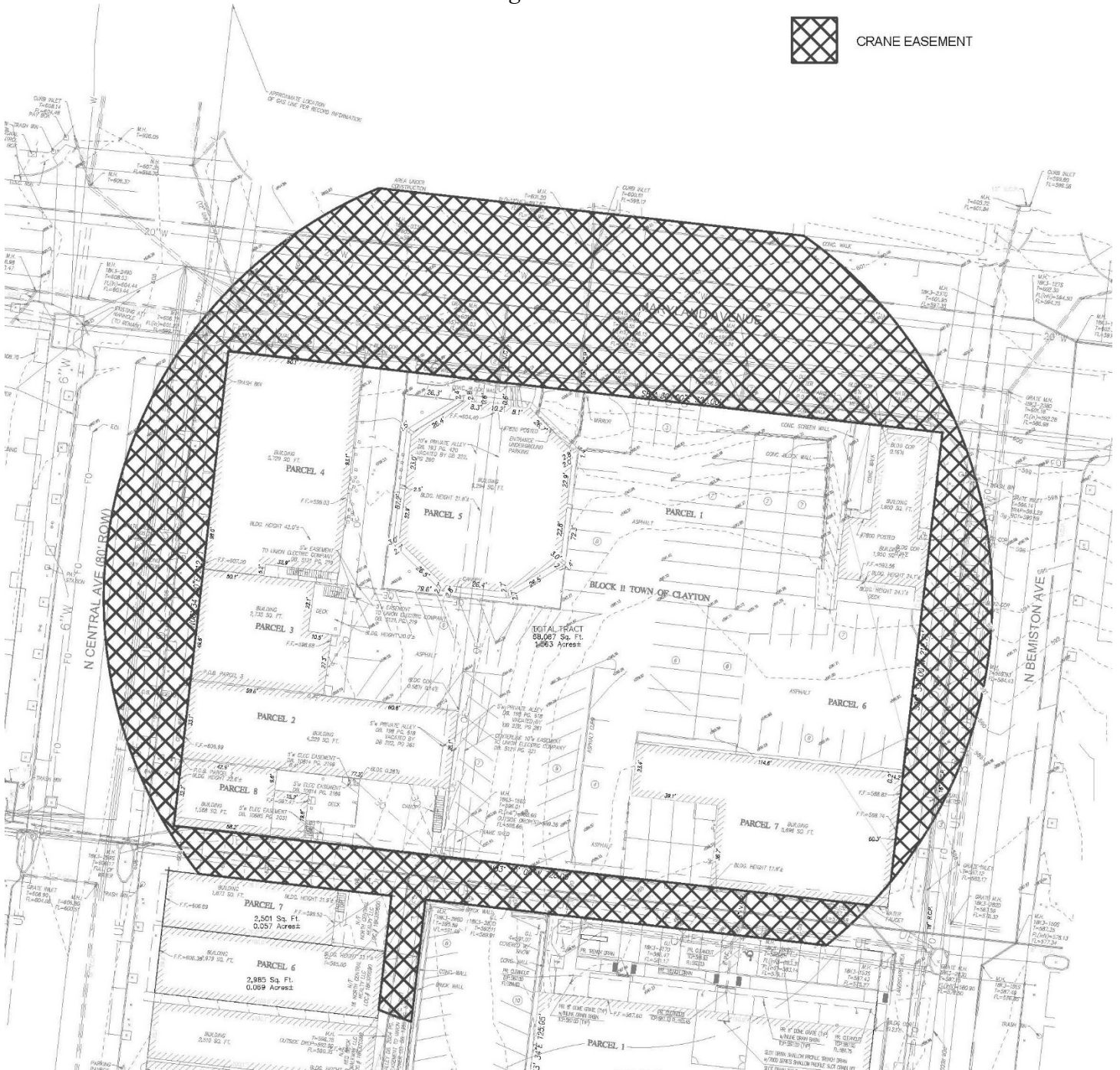
A tract of land situated in the City of Clayton, in St. Louis County, Missouri, being the consolidated lot of Bemiston Place as recorded in Plat Book 369, Pages 525-526 in the land records of St. Louis County, Missouri.

EXHIBIT B

The Air Rights Easement Area



CRANE EASEMENT



The Tieback and Shoring Easement Area



TIE-BACK AND SHORING EASEMENT

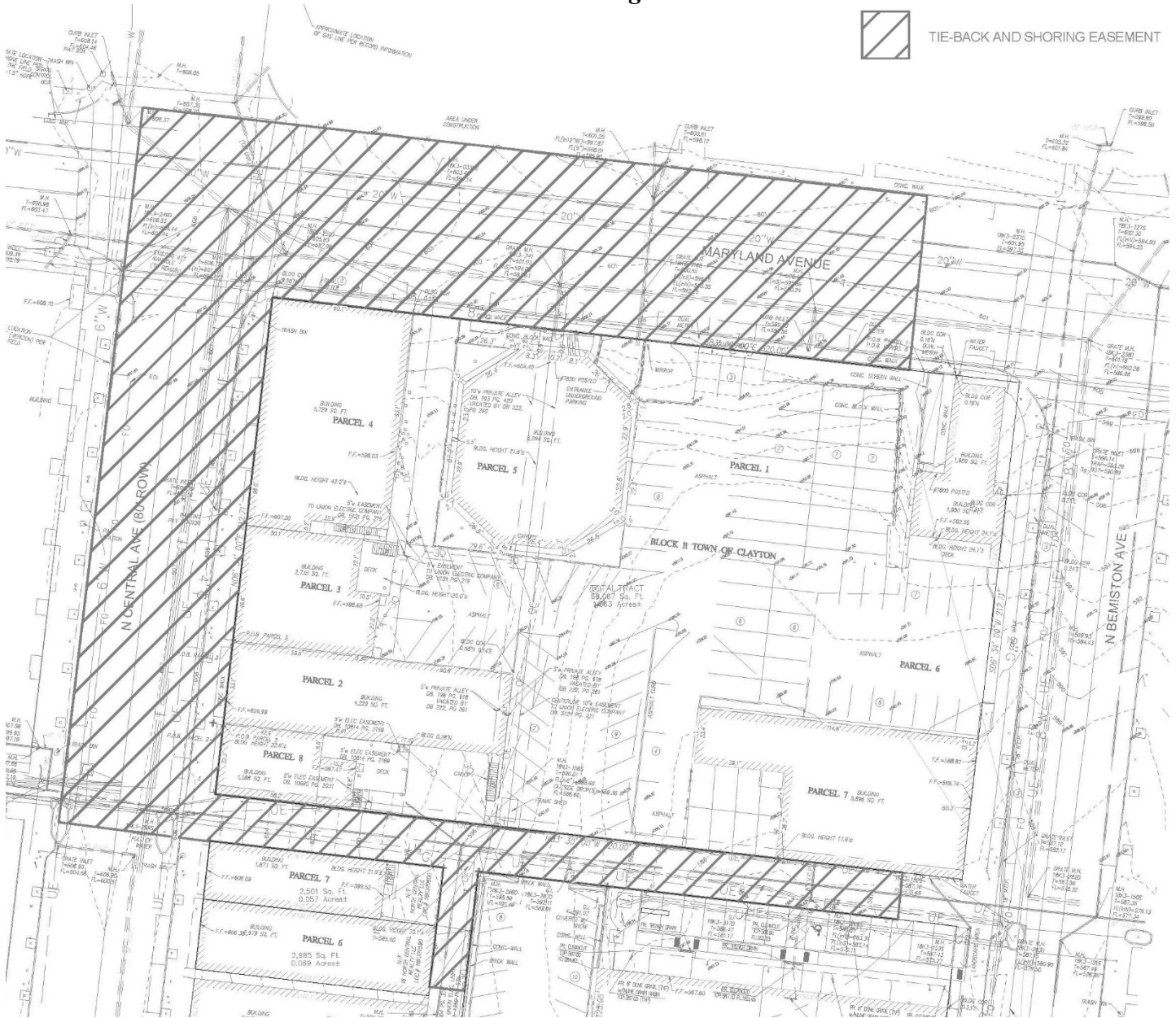


EXHIBIT D

Insurance Requirements

(A) The Insurance Coverages to be maintained by Bemiston and/or its contractors and/or subcontractors while any work is being conducted in the Air Rights Easement Area and/or the Tieback and Shoring Easement Area as described in Section 4 above, shall be provided by insurance companies reasonably acceptable to Clayton, and such insurance companies shall be licensed to conduct insurance business within the state of Missouri. The Insurance Coverages to be maintained by Bemiston and/or its contractors and/or subcontractors shall consist of the following:

1. Workers' Compensation Insurance in full compliance with workers' compensation laws of the State of Missouri, together with Employer's Liability Coverage with minimum limits of liability in the amount of \$1,000,000.00 for each accident and each disease.
2. Commercial Automobile Liability Insurance under Form CA 00 01, covering all owned hired, and non-owned vehicles, with minimum combined single limits of liability of \$1,000,000.00 for each accident.
3. Commercial General Liability Insurance, and, if necessary, excess liability insurance on a "true following-form" basis, all of which is written on an occurrence basis, with the following minimum limits of liability:

General Aggregate	\$3,000,000 00
Products/completed operations aggregate	\$3,000,000.00
Personal and advertising injury	\$5,000,000.00
Each occurrence	\$3,000,000 00
Fire damage legal liability	\$3,000,000.00
Medical expenses	\$ 5,000.00

(B) The Commercial General Liability and the Commercial Automobile Liability Insurance coverages and their respective limits set forth above are being explicitly required and obtained to insure the indemnity obligations set forth in Section 6 of the Agreement to meet the requirements of §434.100.2(8) R.S.Mo. The parties further acknowledge that the cost of these Insurance Coverages is included in the considerations provided in the Agreement and that the limits and coverages afforded by such Coverages is Bemiston's total aggregate liability under the indemnity obligations set forth in Section 6.

(C) Clayton will be named as an additional insured on the Commercial General Liability policy by using ISO Additional Insured Endorsement (Form B), CG 20 10 11 85. The Commercial General Liability, Commercial Automobile Liability and required excess policies will include a severability or cross-liability clause and such insurance will be endorsed to make such insurance primary with respect to any applicable insurance maintained by the City. The Contractor's Workers' Compensation and Employer's Liability policy will include Clayton as an alternate employer by using ISO Alternate Employer WC 00 03 01A.



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
MATT MALICK, P.E., DIRECTOR OF PUBLIC WORKS
DATE: FEBRUARY 8, 2022
RE: ORDINANCE - AN EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF
PUBLIC ELECTRICAL INFRASTRUCTURE ON THE CLARENDALE CLAYTON SITE

The purpose of this easement from Clarendale Clayton LLC to the City of Clayton is to allow the installation and future access for the electrical service and panel that serves city street lighting.

Due to existing conditions encountered in the field, Clarendale Clayton, LLC has requested a modification to the approved site plan which relocated the public street lighting electric service from the right-of-way onto their parcel. Clayton Public Works determined this design change to be acceptable, contingent on the execution of a permanent easement to the City. The easement facilitates the installation of an electric panel and associated electric service line for public street lighting and allows city staff and contractors future access to service this panel. These easements are illustrated in the attached Easement Agreement in Exhibit "A".

Both Public Works and the City Attorney have reviewed and approved the attached easement titled EASEMENT (Street Lighting Underground Electric and 200Amp Panel)

STAFF RECOMMENDATION: To approve the ordinance authorizing execution of the EASEMENT (Street Lighting Underground Electric and 200Amp Panel).

BILL NO. 6889

ORDINANCE NO. _____

**AN ORDINANCE APPROVING AN EASEMENT FOR THE INSTALLATION AND
MAINTENANCE OF PUBLIC ELECTRICAL INFRASTRUCTURE ON THE CLARENDALE
CLAYTON SITE**

WHEREAS, the Clarendale Clayton, LLC is hereby authorized to install a city-owned 200amp electric panel an associated electric service line within the Clarendale site as part of there development; and

WHEREAS, these features will be located, in part, over and beneath property owned by the Clarendale Clayton, LLC, and it is desired that the City enter into the Easement Agreement hereinafter referenced in order to allow such construction devices to be constructed and maintained as hereinafter provided;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF
CLAYTON, MISSOURI, AS FOLLOWS:**

Section 1.

The Board of Aldermen hereby approves and authorizes execution, on behalf of the City of Clayton, of an Easement Agreement to allow construction, installation and maintenance of permanent public electrical infrastructure within the Clarendale Clayton site, insubstantial conformity with the terms shown on Exhibit A, and incorporated herein by this reference. The Mayor, City Manager, and other appropriate City officials are hereby authorized to execute the Easement Agreement and such additional documents and take any and all actions necessary, desirable, convenient, or prudent in order to carry out the intent of this legislation.

Section 2.

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed this 8th day of February 2022.

Mayor

Attest:

City Clerk

200Amp Street Lighting Underground Electric Easement

REMS INFORMATION

Agreement:
Project ID: 450800

EASEMENT

(Street Lighting Underground Electric and 200Amp Panel)

City of Clayton & 7651 Clayton Road
St. Louis County
Geraldine District

KNOW ALL PERSONS BY THESE PRESENTS, this _____ day of _____, 20____, that CLARENDALE CLAYTON, LLC, a Delaware limited liability company, its successors, and assigns, whether one or more and whether an individual, individuals, a corporation, or other legal entity (hereinafter "Grantor"), and as set forth herein, hereby grant unto CITY OF CLAYTON a home-rule city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, its successors, and assigns (hereinafter "Grantee"), the Panel Easement Area and Street Light Easement Area (together, the "Easement") located on the following described land (the "Property"), in St. Louis County, Missouri to-wit:

A tract of land situated in the County of St. Louis, and the State of Missouri, lying in part of Lot 1 of Clarendale of Clayton, a Major Subdivision Plat, a subdivision filed for record in Plat Book 367 Page 220 of the land records of said County of St. Louis, Missouri, and being more particularly described as follows:

COMMENCING at the Northeast corner of said Lot 1, thence along the Northern line of said Lot 1, North 77 degrees 56 minutes 51 seconds West a distance of 80.53 feet; South 06 degrees 10 minutes 26 seconds West a distance of 1.00 feet; North 77 degrees 56 minutes 51 seconds West a distance of 202.00 feet to the TRUE POINT OF BEGINNING of the tract herein described; thence along the following courses and distances describing the centerline of a 10 foot wide easement being 5.00 feet on each side of said centerline, South 12 degrees 27 minutes 27 seconds West a distance of 7.20 feet; South 77 degrees 32 minutes 33 seconds East a distance of 280.32 feet; South 04 degrees 40 minutes 39 seconds East a distance of 78.69 feet; South 12 degrees 36 minutes 40 seconds West a distance of 67.59 feet; South 04 degrees 40 minutes 39 seconds East a distance of 43.72 feet to the point of ending. The sidelines of said Easement are to be lengthened or shortened to fall within the boundaries of said Lot 1.

The strip of land where the Grantee's facilities shall be located hereunder ("Easement Strip") shall be variable width, and is shown illustrated on the drawing marked Exhibit A hereto attached and made a part hereof.

Locator Nos. 19J110425 & 19K320568

together with all rights and privileges reasonably necessary for the exercise and enjoyment of said Easement rights.

As part of Grantor's development of the Property, Grantee required that Grantor (i) install an electrical panel in the Panel Easement Area (as defined herein) ("Panel") serving certain public improvements and adjacent areas to the Property, and (ii) replace, construct and install certain public streetlights ("Street Lights") along the east, south, and west boundaries of the Property.

Grantor hereby grants and conveys to Grantee a non-exclusive easement in gross over, across, to and upon that portion of the Property ("Panel Easement Area") depicted on Exhibit A attached hereto and made a part hereof for the sole and exclusive purposes of operating, maintaining, repairing, removing, and replacing the Panel in the Panel Easement Area from time to time, and regulating, controlling and running electrical current through the Panel, solely in connection with Grantee's operation of the Street Lights, and upon and subject to the conditions and limitations herein contained.

Grantor hereby grants and conveys to Grantee a non-exclusive easement in gross over, across, to and upon that portion of the Property ("Street Light Easement Area") depicted on Exhibit A attached hereto and made a part hereof for the sole and exclusive purposes of operating, maintaining, repairing, removing, and replacing the Street Lights and associated electric lines in the Street Light Easement Area from time to time, solely in connection with Grantee's operation of the Street Lights, and upon and subject to the conditions and limitations herein contained.

Grantor has, at Grantor's sole cost and expense, installed the Panel in the Panel Easement Area, and has installed the Street Lights in the Street Light Easement Area, in accordance with the plans and specifications prepared by Grantor and approved by Grantee. Except for such initial installation cost [(which Grantor has fully paid)], Grantee shall pay all costs and expenses of any nature whatsoever relating to the exercise of the Easement rights granted herein, including the cost of operating, maintaining, repairing, removing and replacing the Street Lights and the Panel in such manner as Grantee shall reasonably deem necessary, but in all cases within the Street Light Easement Area and the Panel Easement Area, as the case may be. Grantee agrees, in the exercise of the Easement rights granted herein, to use best efforts to minimize interference with any tenant or occupant of the Property or with work being done at the Property or with any business being conducted at the Property. Grantee shall have the right to use the Street Light Easement Area and the Panel Easement Area from time to time, as may reasonably be required for any operational, maintenance, repair, removal, or replacement work at the Property.

Grantor also conveys the right over the Property solely for ingress to and egress from the Street Light Easement Area and the Panel Easement Area, solely for the purposes herein stated; together with the necessary and reasonable right, at Grantee's sole cost and expense, to trim, control growth, cut and remove or cause to be removed at any time, any and all brush, bushes, saplings, trees, roots, undergrowth, rock, overhanging branches, and other obstructions upon, over, and under the surface of the Street Light Easement Area or the Panel Easement Area, as the case may be, and of the premises of Grantor adjoining the same reasonably deemed by Grantee to materially interfere with the exercise and enjoyment of Grantee's rights hereunder, endanger the safety of said facilities, or in order for Grantee to maintain compliance with the minimum clearance requirements of the National Electric Safety Code, as the same is in effect on the date hereof.

Grantee shall be responsible, at its sole cost and expense, for actual damages (except the cutting and trimming of trees and other vegetation) occurring on the Property as a result of the construction, operation, use, maintenance, or repair of Grantee's facilities and shall reimburse Grantor (and its successors and assigns in title) for such loss or damages. Grantee shall, at its own expense, replace, repair and restore as nearly as possible to their original condition all lands or premises included within or abutting the Easement area which are altered, disturbed, damaged or destroyed in any manner by the construction, use, operation, repair and maintenance of the Easement by Grantee. Such restoration shall include the backfilling of trenches, the reseeded or resodding of lawns or pasture areas, and the restoration, replacement and repair of structures, fences, paved areas (including parking areas) or other elements of the Property that are altered, disturbed, damaged or destroyed by or in connection with the Grantee's construction, operation, use, installation, repair and maintenance of the electric facilities. Grantee further agrees that it shall replace any

.

landscaping, trees or shrubbery, in similar size and quality, that are damaged as a result of any work or maintenance conducted on the Easement area by Grantee or its respective contractors, agents, designees or employees with the exception of necessary and reasonable cutting and trimming needed for construction, operation, maintenance, or repair.

Grantor shall not be responsible or liable for injuries to persons, including death, or damages to property where such injuries or damages are caused by, result from, or arise directly out of the Easement hereby granted, and are not due solely to the negligence of the Grantor, its agents, employees, successors, assigns or invitees. Grantee will, and will require its agents, contractor(s), and subcontractors to agree to, indemnify Grantor against any loss, damage or liability arising from Grantee's use of, or work performed or permitted by the such agents, contractor(s), and subcontractors on the Panel Easement Area or the Street Light Easement Area, and any and all applicable parties shall have insurance coverage for such indemnification. Grantee shall carry commercial general liability insurance in the amount of \$1,000,000, naming Grantor, its property manager, and any secured lender with an interest in the Property as additional insureds. Grantee shall provide evidence of such coverage in the form of a certificate of insurance to Grantor prior to entering the Property.

Grantor, for itself, its successors, and assigns, does hereby warrant and covenant unto Grantee, (1) that Grantor is the owner of the above-described land and has the full right and authority to grant this Easement, and (2) that Grantor will not create or permit any building or other obstruction or condition of any kind or character upon Grantor's premises that will materially interfere with the Grantee's exercise and enjoyment of the Easement rights hereinabove conveyed.

This easement shall be governed by the laws of the State of Missouri.

IN WITNESS WHEREOF, the said Grantor has hereunto caused this Easement to be signed this _____ day of _____, 20_____.

liability company

CLARENDALE CLAYTON, LLC, a Delaware limited

By: _____
Signature

Name: _____

Title: _____

ALL PURPOSE ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____) ss:

On this _____ day of _____, AD. 20_____,
before me, the undersigned, a Notary Public in and for said State,
personally appeared.

PRINT/TYPE NAME

PRINT/TYPE NAME

PRINT/TYPE NAME

☐ to me personally known

or

☐ provided to me on the basis of satisfactory evidence

to be the persons(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf
of which the person(s) acted, executed the instrument.

NOTARY SEAL _____
(Sign in Ink)

(Print/type name)

Notary Public in and for the State of _____

YTA
WR#21MT708235
01/31/2022

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL

☐ CORPORATE

Title(s) of Corporate Officers(s):

☐ Corporate Seal N/A

☐ Corporate Seal is affixed

☐ PARTNER(s)

☐ Limited Partnership

☐ General Partnership

☐ ATTORNEY-IN-FACT

☐ EXECUTOR(s),

☐ ADMINISTRATOR(s),

☐ or TRUSTEE(s):

☐ LLC

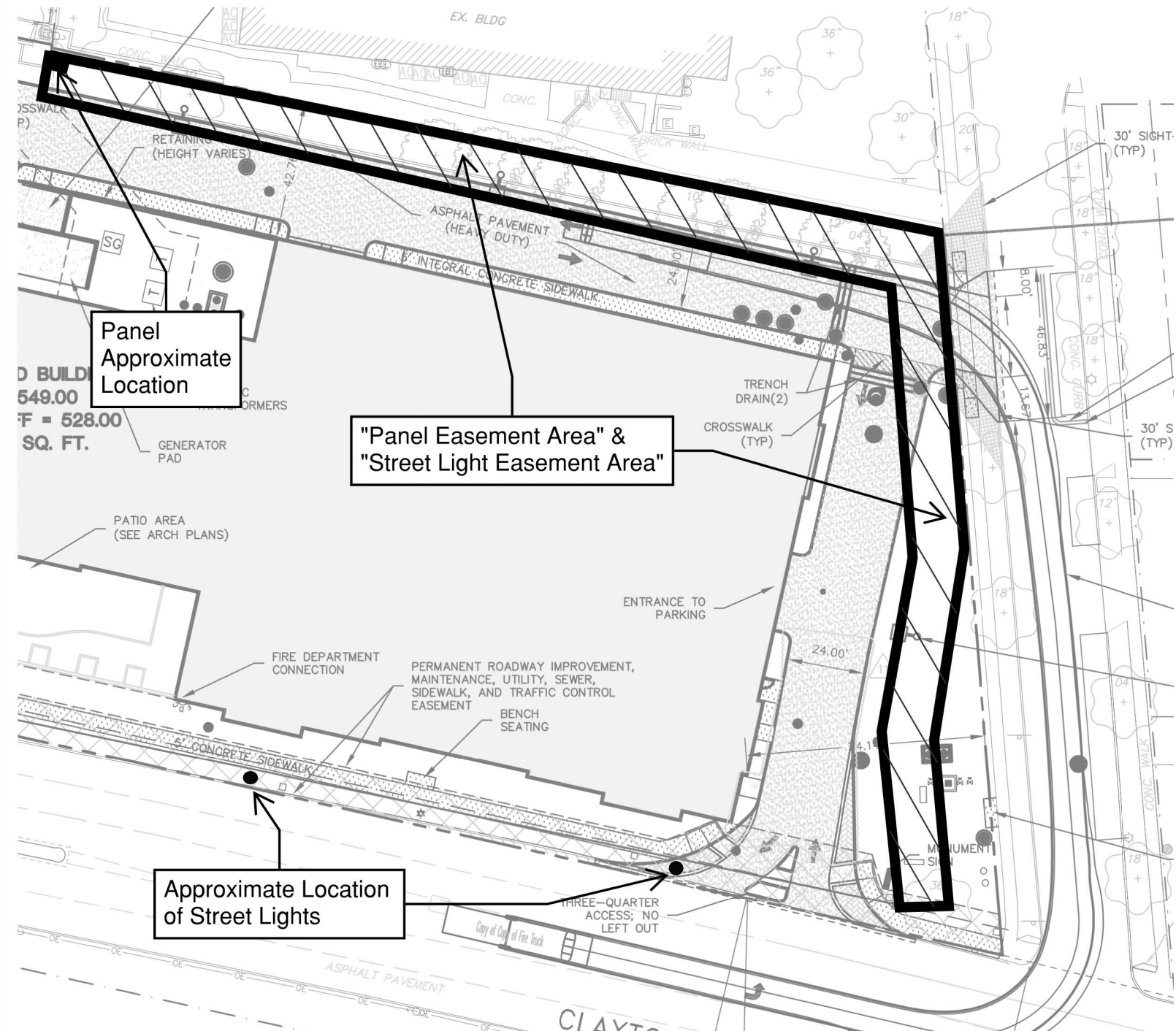
Member/Manager

☐ GUARDIAN(s)

☐ or CONSERVATOR(s)

☐ OTHER

Exhibit A





City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
TONI SIERING, DIRECTOR OF PARKS AND RECREATION
DATE: FEBRUARY 8, 2022
SUBJECT: ORDINANCE - A MANAGEMENT AGREEMENT WITH 5TH SET, LLC
FOR TENNIS MANAGEMENT SERVICES AT SHAW PARK TENNIS
CENTER

In 2013, due to the departure of a long-term tennis professional, the City of Clayton (City) determined that they would explore contracting out the management and programming at the Shaw Park Tennis Center. Since that time, Frontenac Racquet Club has been under contract to provide those services. Over the past nine years this arrangement has worked well, with usage and revenue nearly doubling during this time period.

As it has been nine years since this service was last bid, it was decided that we would issue a Request for Proposals to test the market. We received two responses to the RFP; one in the name of Frontenac Racquet Club and one from 5th Set, LLC, a corporation that has been established by Clark Taylor, the manager of our Tennis Center over the past five years. Both submittals contained the same proposed hours and division of fees. 5th Set, LLC was set up by Clark Taylor to allow for the option of contracting directly with this corporation and can meet all the City's requirements of the bid. Frontenac Racquet Club is supportive of making this change, as it essentially removes them as the middleman in this agreement.

Before you tonight is a proposed Management Agreement with 5th Set, LLC. If approved, it will become effective March 1, 2022, with terms that include:

- Initial term from March 1, 2022, to December 31, 2024; renewal option is included.
- City will retain 25% of all revenue generated and Contractor will retain 75%.
- Contractor will staff and manage the Tennis Center during agreed upon hours of operation.
- Contractor will provide a full array of programs, camps and private instruction.
- Contractor will be responsible for custodial services during the season.
- Contractor will take registration for programs, reserve courts for member use, check membership and collect daily fees.
- City will also take registrations for programs and the sale of season passes.
- City will perform pre and post season facility preparation.
- City will manage facility maintenance including capital and operational needs.

The attached agreement details these requirements as well as items related to insurance, notification and indemnification.

STAFF RECOMMENDATION: To approve the ordinance authorizing the execution of the Management Agreement with 5th Set, LLC for the management and programming of the Shaw Park Tennis Center.

BILL NO. 6890

ORDINANCE NO. ____

AN ORDINANCE PROVIDING FOR THE EXECUTION OF A MANAGEMENT AGREEMENT WITH 5TH SET, LLC FOR TENNIS MANAGEMENT SERVICES AT SHAW PARK TENNIS CENTER

WHEREAS, the City of Clayton Board of Aldermen is charged with the duty of planning for the recreational needs of residents and visitors, and how best to meet those needs; and

WHEREAS, the City owns the facility known as Shaw Park Tennis Center; and

WHEREAS, 5th Set, LLC provides tennis management services; and

WHEREAS, upon request and advertisement for proposals, 5th Set, LLC submitted their proposal and possesses the expertise and experience necessary to provide Tennis Management Services to the City of Clayton; and

WHEREAS, the City desires to retain the Contractor to manage the operation of Shaw Park Tennis Center;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI AS FOLLOWS:

Section 1. The Board of Aldermen approves on behalf of the City a Management Agreement with 5th Set, LLC, for Tennis Management Services in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such document changes as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient, or prudent in order to carry out the intent of this legislation.

Section 2. This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Passed this 8th day of February 2022.

Mayor

ATTEST:

City Clerk

Management Agreement

This Management Agreement (the “Agreement”) is made and entered into this 1st day of _____, 2022 by the City of Clayton (the “City”) and _____ - (the “Contractor”).

WHEREAS, the City owns the facility known as the Shaw Park Tennis Center (the “Tennis Center”) located at 217 S. Brentwood Blvd.; and

WHEREAS, the Contractor provides tennis program and facility service management; and

NOW THEREFORE, in consideration of the premises and mutual covenants and conditions contained herein, all of which are acknowledged by the City and the Contractor to be good, valuable, and sufficient consideration, it is understood and agreed as follows:

The City assigns to Contractor the premises at the Shaw Park Tennis Center as well as all existing equipment at Tennis Center (the “Assigned Space”) in Shaw Park, Clayton, MO 63105 during each of the next three Seasons (as defined in Sec. 4.1.3, below).

SECTION 1. TERM AND TERMINATION.

Term. The initial term of this Agreement (the “Initial Term”) is for thirty-three months commencing March 1, 2022, ending December 31, 2024. At the conclusion of the Initial Term, Contractor and City shall have the option of renewing this Agreement for one or more additional years by mutual agreement.

1.1. Termination. This Agreement may be terminated in any of the following manners:

1.1.1. By either party, with or without cause, upon one (1) month’s prior written notice to the other.

1.1.2. Upon material breach of this Agreement the non-breaching party may terminate this Agreement for cause by providing thirty (30) days’ prior written notice to the breaching party specifying the grounds constituting a material breach of this Agreement, followed by the breaching party’s failure to cure said breach prior to the expiration of said thirty (30) day notice period.

SECTION 2. PAYMENT TERMS.

2.1. Terms. For the Initial Term of this Agreement, all gross revenue collected by reason of use of or services provided through the facility will be split 25/75 by the City and the Contractor. The City will retain 25% of all funds collected with the Contractor retaining 75%.

2.2. Payments to Parties. Various fees for use of and activities at the Assigned Space will be collected by both City and Contractor during the course of normal Tennis Center operations as referenced in Sec. 4.1.4, below. The Contractor and the City will be responsible for providing each other with any records and supporting documentation in connection with revenues collected by each party and derived from use of or services provided through the Assigned Space each month. That information is to be provided to the other party by the 10th day of the following month. The City’s Athletic and Facilities Supervisor will calculate the revenue share and provide documentation to the Contractor on a monthly basis. The City may withhold from any distribution it may owe to Contractor in a given month the City’s 25% share of annual revenue derived from use of or services provided through the Assigned Space, also pursuant to Sec. 2.1, above. If the revenues received by City are insufficient to satisfy the full amount owed to City the Contractor will make payment to City in whatever amount is necessary to satisfy the obligation.

2.3. Records. Contractor shall make available to the City or its authorized representatives all the Contractor books, records and supporting documentation within reason used in connection with payment of the City Revenue Share.

2.4 Readjustment of Terms. Should the City and the Contractor wish to renew the agreement, the payment terms shall be evaluated to ensure the terms are still mutually acceptable to both parties.

SECTION 3. POSSESSION. Contractor's taking possession of the Assigned Space shall be conclusive evidence that the Assigned Space is in good condition.

SECTION 4. SCOPE OF RESPONSIBILITY. For the Term of this Agreement, the City will make available the Assigned Space located at Shaw Park Tennis Center for exclusive use for programming and daily use by the Contractor with the exception of use by Clayton High School's Tennis Teams during their seasons. All other rental usage will be coordinated through the City in cooperation with the Contractor.

4.1 Responsibilities of Contractor

4.1.1. Licenses and Permits. Contractor will obtain all licenses and permits necessary to provide services within the Assigned Space. Contractor will complete its application to the responsible authorities for all necessary permits, including a City of Clayton business license.

4.1.2. Operational Expenses. Contractor will provide and fund all staff, marketing, supplies and consumable products necessary to provide services within the Assigned Space.

4.1.3. Hours of Operation. Contractor will provide operational hours agreed upon between the Contractor and the City beginning on the first Saturday in May and ending on the last day of September (a "Season"), but no shorter than:

May

Monday – Friday	5:00 p.m. – 8:00 p.m.
Saturday & Sunday	8:00 a.m. – 5:00 p.m.

June – August (September hours begin once Clayton Schools start)

Monday – Thursday	8:00 a.m. – 8:00 p.m.
Friday – Sunday	8:00 a.m. – 5:00 p.m.

September

Monday – Friday	5:00 p.m. – 8:00 p.m.
Saturday & Sunday	8:00 a.m. – 5:00 p.m.

In addition, the Contractor may conduct lessons at the facility throughout the year, weather permitting. Revenue received by Contractor by reason of use of or service provided through the Assigned Space during the year shall be included in calculating "gross annual revenue" (as that term is used in Sec. 2.1, above) for that calendar year.

4.1.4. Collection of Fees. Contractor shall collect daily fees directly from visitors through point-of-sale system. In addition, all annual pass sales, and rental revenue will be collected by the City and deposited with the City. It is expected that the Contractor will scan season pass holder's membership cards in order to authenticate membership. Programming revenue may be collected by both the City and Contractor and deposited at their respective facilities.

4.1.5. Maintenance and Care of Area. The Contractor will be responsible for the provision of its own custodial staff for the immediate areas. All windows, equipment, floors, and counters in the work area will be kept clean and sanitary and in full compliance to the laws, rules and regulations of the City of Clayton, State of Missouri and St. Louis County. Tables, chairs, floors and bathrooms in the Tennis Center are to be kept clean and sanitary, free of debris, and ready for public use at all times. Contractor staff will collect all litter and garbage from the areas and place it in closed dumpsters provided by the City's waste management contract. Contractor staff will be responsible for the cleanliness of the ten tennis courts as well. City staff will handle pre-season and post-season cleaning of the facility and ten courts.

4.1.6. Maintenance of Equipment. Contractor will be solely responsible for all scheduled and unscheduled maintenance and repairs for all equipment, appliances and machinery installed by Contractor.

4.1.7. Employees. The City shall require the Contractor to perform background checks on all personnel employed at the Assigned Space. Contractor and City recognize that the Tennis Center is a recreation facility located adjacent to a park and patronized by many young people. For this reason, the City and the other public entities responsible for facility operations routinely conduct background checks on personnel employed at the Tennis Center and have established standards to ensure the safety and well-being of patrons. Contractor agrees that any and all persons employed at the Assigned Space shall be subject to the same background checks and employment standards utilized by the City and its affiliated public entities for employees having a similar measure of interaction with patrons. Contractor agrees to remove any employees who fail to meet such standards.

4.1.8. Equipment. Contractor is responsible for providing additional equipment as needed for their proposed operation.

4.1.9. Schedule. Contractor will be responsible for developing a schedule of programs and activities at the facility. This schedule will be provided to the City in order to ensure for proper coordination and promotion of all activities. In the case that any outside organization wishes to schedule tournaments at the facility, this will only be done with the approval of the City. At no time will the Contractor close down the facility for events without prior approval of the City.

4.2. Responsibilities of the City

4.2.1. Utilities. The City will provide all utilities, to include local telephone, electricity, sewer and water, necessary to maintain operation of the Tennis Center.

4.2.1.1. No Liability for Interruption. City does not warrant those services described within Section 4.2.1 of this Agreement will be uninterrupted. No interruption of service shall be deemed an eviction or disturbance of the Contractor's use and possession of the Assigned Space or shall render City liable to Contractor for damages or relieve Contractor from the performance of the Contractor's obligations under this Management Agreement. City will use reasonable effort to restore interrupted services upon notice in writing or by telephone from Contractor of the interruption of service.

4.2.2. Advertising. The City will provide advertising space to Contractor in the City's published recreation program brochure. Space provided will be up to two (2) pages in the program brochure. In addition, the city will promote on its website and through its enews marketing.

4.2.4. Equipment. The City will provide equipment as outlined in Exhibit A. Additional requests for equipment will be considered when and if funds are available.

4.2.5. Parking. The City will provide up to three (3) parking passes for use by Contractor's staff. Parking is located behind the Ice Rink. Additional public parking is available on Shaw Park Drive.

SECTION 5. ALTERATIONS. Contractor may make alterations to the Assigned Space at the Contractor's sole expense. Any alterations must be mutually agreed upon between Contractor and the City. All alterations to be made in the Assigned Space must be approved by the City in writing prior to work start. Contractor agrees to comply with all federal, state and local laws, rules and regulations relating to the alteration work and the storage of any materials or supplies associated with such alterations. Contractor agrees to indemnify and hold the City harmless from any and all damages, injuries and claims of every kind or nature growing out such alterations. Any trade fixtures or equipment installed by the Contractor for its use – but not alterations to the Assigned Space - may be removed by Contractor at the termination of this Management Agreement, but Contractor shall repair any damage to the Assigned Space caused by such removal. Contractor is not permitted to advertise for any company without prior approval from Director of Parks and Recreation or their designee.

SECTION 6. REPAIRS. City shall, at its expense, make all necessary repairs and replacements, excepting those necessitated by the act or omission of Contractor or its agents, employees, guests or invitees (collectively, "Contractor Representatives"), to interior structural systems and the exterior of the Tennis Center building, the public portions of the Tennis Center and the electrical, plumbing, air conditioning and other similar systems in the

Tennis Center which service the Assigned Space (“City Repair Items”). Contractor shall give prompt written notice to City of all damage to or defects in any City Repair Item. Contractor shall be liable for and make all repairs for damage done to the Assigned Space by any Contractor Representative. If Contractor fails to make any repairs, City may, but shall not be required to, perform such work at Contractor’s expense, the cost of which shall be payable by Contractor on demand. There shall be no allowance to Contractor (or diminution of rental value and no liability on the part of the City) by reason of damage to the property of Contractor or injury to the business or otherwise arising from City’s making or failure to make any repairs, alterations, additions or improvements, provided that City proceeds in good faith and without undue delay to make required repairs.

SECTION 7. ASSIGNMENT AND SUBLETTING. Contractor shall not, without the prior written consent of the City, assign or encumber, by operation of law or otherwise, this Management Agreement or any interest under this Management Agreement or sublet all or any part of the Assigned Space or permit the use of all or any part of the Assigned Space by any person or entity other than Contractor or its subsidiaries and patrons of the Tennis Center. The consent by the City to any assignment or subletting shall not be construed as relieving Contractor or assignee or sub lessee from obtaining the written consent of the City to any further assignment, subletting or transfer or releasing Contractor from any liability or obligation under this Management Agreement, whether or not then accrued, and shall not be construed to permit a change in the permitted use specified under this Management Agreement.

SECTION 8. POLICIES AND PROCEDURES. Contractor and Contractor’s employees and agents will perform and abide by the policies and procedures for the use of the Tennis Center, a copy of which are attached hereto as Exhibit B. Changes to these policies shall become effective ten (10) days after a copy of such changes is mailed to Contractor.

SECTION 9. ATTORNEY’S FEES AND EXPENSES. Except as otherwise specifically provided herein, each party shall pay its own attorney’s fees with respect to any matter arising under this Management Agreement.

SECTION 10. EVENTS OF DEFAULT. Each of the following shall be an “Event of Default”: (a) City’s or Contractor’s failure to perform or observe the terms and conditions of this Management Agreement or any other agreement(s) hereunder, which failure is not cured within thirty (30) days after written notice by the non-breaching party specifying such default; (b) Termination of the Agreement, for any reason; (c) Contractor’s or Contractor’s assignee/sublessee abandoning or vacating the Assigned Space for a period of seven (7) days or more; (d) levy upon the leasehold interest of Contractor or any assignee/sublessee of Contractor under execution or otherwise; (e) Contractor or any assignee/sublessee of Contractor files any petition (or any petition is filed against Contractor or any assignee/sublessee of Contractor and is not dismissed within twenty (20) days thereafter) under any section or chapter of any federal bankruptcy code or state bankruptcy act; (f) Contractor or any assignee/sublessee makes an assignment for the benefit of creditors; (g) a receiver or trustee is appointed for the substantial part of the assets of Contractor or an assignee/sublessee of Contractor.

SECTION 11. NOTICES. All notices and other communication hereunder shall be in writing, and shall be deemed to have been given when delivered in person or received by email or first class, registered or certified US mail, return receipt requested, postage and registration of certification fees prepaid, or delivered by reliable overnight delivery service, providing a receipt evidencing delivery, or by facsimile with a copy also delivered by any of the foregoing means:

If to the City, to:

City of Clayton
Department of Parks & Recreation
The Center of Clayton
50 Gay Avenue
Clayton, MO 63105
Attn: Toni Siering
tsiering@claytonmo.gov

If to the Contractor, to:

5th Set, LLC
7422 Devonshire Avenue
St. Louis, MO 63119
Attn: Clark Taylor
clark@frc-tennis.com

Or at such other address as hereafter shall be furnished by a notice sent in like manner by such addressee to the other.

SECTION 12. INSURANCE PROVIDED BY CONTRACTOR. During the term of the Management Agreement, the Contractor shall, at its own expense provide and maintain in full force and effect an insurance policy or policies protecting the City of Clayton and Contractor, their officers and employees against any loss, liability or expense from personal injury, death, property damage or otherwise arising or occurring upon or in connection with the Assigned Space or by reason of the Contractor's operations. The City of Clayton and its officers and employees shall be named as an additional insured under such policy or policies. Such insurance shall be written by responsible insurance companies satisfactory to the City and shall be in an amount not less than Three Million Dollars (\$3,000,000) for damages resulting to any one person, and not less than Three Million Dollars (\$2,600,000) per occurrence. Certifications of Insurance showing compliance with the forgoing requirements shall be furnished by the Contractor to the City prior to opening of the Tennis Center. Such certificates shall state that the policies will cover the season and will not be canceled nor altered without at least thirty (30) days prior written notice to the City. Upon Contractor's failure to do so, the City may at his option obtain such insurance and the cost thereof be paid as additional rent due, to be paid upon request by the City.

In addition, the Contractor shall procure and shall maintain during the Term of the Agreement, Worker's Compensation Insurance in an amount equal or greater than Missouri Workers Compensation statute requirements (\$500,000) for all of its employees to be engaged and perform work under the Agreement, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all such employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In the event any class of employees engaged in hazardous work under the Agreement is not protected under the Worker's Compensation statute, the Contractor shall provide and shall cause such subcontractor to provide adequate Employer's Liability Insurance for the protection of its employees not otherwise protected.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

The Vendor shall maintain Comprehensive Automobile Liability insurance coverage in the amount of \$3,000,000 per occurrence and shall supply proof of coverage to the City before commencing work in the facility.

SECTION 13. INDEMNIFICATION. The Contractor is serving as an independent contractor and not as an agent employee or partner of the City. The Contractor covenants and agrees to indemnify and hold the City of Clayton and its respective board members, aldermen, officers and employees harmless from any and all claims, rights or causes of action for damages of every kind and nature whatsoever which may result from the Contractor's performance of services under this Agreement.

IN WITNESS WHEREOF, the parties hereunder have set their hands and signature the date first written above.

The City of Clayton

By: _____

Title: City Manager

Date: _____

5th Set, LLC
A Missouri corporation

By: _____

Title: President

Date: _____

Exhibit A
City of Clayton Equipment

Tennis Ball Carts – 3
Tennis Ball Hoppers – 4
Ball Machine – 1
Portable Battery Pack - 1
Rain Shuttles – 3
8 & Under Tennis Nets – 4
Cooler Stand sets – 6
Ice Machine
Computer
Phone
Benches
Tables
Umbrellas
Television
First Aid Equipment
Vending Machines
Safe
AED

Exhibit B
SHAW PARK TENNIS CENTER
GENERAL POLICIES AND PROCEDURES

The Shaw Park Tennis Center has been constructed with a goal of balancing the recreational needs of the community, programming and rental groups. The facility will maintain a safe, family-friendly recreational tennis venue suitable for adults and children as well recreation programs.

- I. Admittance Procedures** – All Shaw Park Tennis Center users shall be verified upon entrance to the facility to ensure the safety and security of the members, program participants, the facility and its programs.
 - A. Season Pass Holders – All pass holders wishing to utilize the Shaw Park Tennis Center are expected to show their pass upon entry. The cashier will verify the pass holder’s identity before allowing admission. The current Season Pass fees for the Shaw Park Tennis Center can be found in the appendix of this document.
 - B. Program Participants – Program participants shall stop and identify themselves upon entry through the means specific to the program enrolled.
 - C. Daily Admission Patrons – All non-season pass holders wishing to access the facility are required to pay a daily admission fee upon entry. Children aged 2 and younger are admitted free of charge when entering with a paying adult or guardian over the age of 15. The current Daily Admission fees for the Shaw Park Tennis Center can be found in the appendix of this document.
 - D. Spectators – Spectators must remain in designated viewing areas.
- II. Age Limits** – Age limits are established for children using the Shaw Park Tennis Center. Children 8 years of age and younger shall be accompanied by a guardian 15 years of age and older.
 - A. Parents or guardians are expected to directly supervise their children at the Shaw Park Tennis Center.
 - B. Unsupervised children will be removed from the Shaw Park Tennis Center and taken to the Tennis Attendant to contact their guardian or parent and wait for them to pick the child up.
 - C. The staff will question the age of any child that does not appear to meet the age minimum.
- III. Attire** – The Shaw Tennis Center is a family-oriented facility. Patrons are required to dress in appropriate attire for such a facility.
- IV. Capacity** – The maximum capacity for the Shaw Park Tennis Center is 160 patrons. At times when the Shaw Park Tennis Center reaches its maximum capacity, the attendant will alert patrons who are checking in that the courts are at capacity and keep patrons from entering the facility. The attendant will post a sign notifying patrons that the tennis center is at capacity and will reopen when there is sufficient additional space.
- V. Cash Handling Procedures** – The Shaw Park Tennis Center will follow the department’s cash handling procedures.
- VI. Daily Admission Fees** – Daily Admission fees policies and procedures located in Chapter 4 will be followed. In addition, specific policies concerning the Shaw Park Tennis Center shall be enforced. In the case of inclement weather, only daily admissions purchased within 30 minutes of the inclement weather will be refunded. Patrons must bring their receipt to the attendant for refund.
- VII. Facility Use** – The facility will be used in a manner that is safe and secure for all patrons and users of the facility. The Shaw Park Tennis Center will be used for tennis only without the express approval from the Director of Parks and Recreation or their designee.

- VIII. Food and Beverage** – The City of Clayton will allow patrons to bring food and beverages into the Shaw Park Tennis Center.
- A. Food and drink shall remain in the tennis hut or patio area only. Only sealable drink containers may be taken onto the tennis courts.
 - B. Food and drink may be purchased from vending machines located at the tennis hut.
 - C. Glass containers are not permitted.
 - D. Large coolers are not permitted on the tennis courts.
 - E. Alcoholic Beverages are not permitted on the tennis courts.
- IX. Hours of Operation** – The Shaw Park Tennis Center season begins in April and lasts until the end of September. Any changes in hours will be communicated to patrons and guests in a reasonable amount of time by posting of notice, e-mail and City publications.
- A. The current hours of operation for the Shaw Park Tennis Center can be found in the appendix of this document.
 - B. During the off season, a minimum of three courts will be available for patron use. Lights will not be accessible on all courts during the off season.
- X. Language** – The Shaw Park Tennis Center is a family-oriented facility. Foul language will not be tolerated. Patrons warned repeatedly shall be asked to leave the facility.
- XI. Locker Use** – The Shaw Park Tennis Center is not currently equipped with lockers. The City is not responsible for lost or stolen articles.
- XII. Lost and Found** – Lost and found items will be stored at the Shaw Park Tennis Center. Valuables will be stored up to thirty days in the safe. Patrons should contact the Tennis Manager to have the safe checked for lost valuables. After 30 days lost and found valuables will be turned over to the Clayton Police Department for one year. Due to storage constraints, lost and found items not considered “valuables” are stored for two weeks before being donated to charity.
- XIII. Pets** – Pets are not permitted at the Shaw Park Tennis Center, with the exception of service animals.
- XIV. Rules** – The Shaw Park Tennis Center has established rules to govern the use of the activity areas. All rules were established with patron safety and security in mind. It is the responsibility of staff to enforce these rules consistently and fairly at all times.
- A. If patrons are waiting to use a court, single matches will be limited to 60 minutes and double matches will be limited to 90 minutes.
 - B. Children 8 years of age and under shall be accompanied by a parent or guardian 15 years of age or older.
 - C. Chewing gum is not permitted anywhere at the Shaw Park Tennis Center.
 - D. Glass containers are not allowed at the Shaw Park Tennis Center.
 - E. Food and drinks are permitted in designated areas only.
 - F. The City of Clayton is not responsible for lost, stolen or damaged personal items. Lockers are not available for patron use.
 - G. Smoking is prohibited at the Shaw Park Tennis Center.
- XV. Signage/Advertising** – No person or business shall sell or offer to sell any item or service for commercial gain in or upon the grounds of Clayton parks, The Center of Clayton or in City of Clayton Parks and Recreation facilities without permission from the Director of Parks and Recreation or their designee. Outside flyers of programs/events, from not-for-profit organizations, that are not in direct competition with programs offered through the Clayton Parks and Recreation Department will be considered for posting.

- A. The Director of Parks and Recreation or their designee shall approve flyers/banners at least one week prior to posting.
 - B. Locations and sizes shall be designated by the department.
 - C. Materials shall look professional and indicate the identity of the organization sponsoring the event. Electronic proof of the design must be approved by the Department before production.
 - D. Materials shall fit within the Solicitation section of this policy.
 - E. Materials may be posted up to two weeks in advance of an event/activity.
 - A. All materials will be discarded following publicized event unless otherwise notified.
- XVI. Solicitation** – Solicitation, including the distribution of literature or the seeking of contributions, is not permitted in Parks and Recreation facilities. Violations will be reported to the Clayton Police for investigation.
- A. In this instance, City Parks are not considered facilities. Solicitor may set up outside the fence of the facility.
 - B. Facilities may be the collection site for charitable contributions with approval of the Director of Parks and Recreation or their designee
- XVII. Smoking** – Ordinance 215.681(Smoking Prohibited on City Property) prohibits the possession of lighted or heated smoking materials in any form, including, but not limited to, the possession of lighted or heated cigarettes, cigars, pipes or other tobacco products, in or any property or premises owned or leased for use by the City of Clayton, including buildings, grounds, parks, playgrounds, sports arenas and facilities, playing fields, parking lots and parking structures.
- XVIII. Vandalism** – Violations will be reported to the Clayton Police for investigation and vandals will be prosecuted to the full extent of the law.
- XIX. Violators** – Rule violators create an unsafe and unfriendly recreation environment. Rule violators shall be dealt with in a reasonable and courteous manner. When dealing with rule violators, staff will make every attempt to be consistent, explain the rules and resolve any situation. Repeat rule violators or those refusing to abide by tennis center rules will be reported to a Parks and Recreation Supervisor or the Clayton Police. When dealing with rule violators staff will follow the following guidelines:
- A. Staff will be consistent and enforce rules the same way every time.
 - B. Staff will understand and be able to explain rules to patrons.
 - C. Staff will use a positive approach.
 - D. Staff will refer problems to a manager or supervisor if further action is warranted.
- XX. Weather Cancellations** – Weather related cancellations will be updated on the Shaw Park Tennis Center Hotline, 314-290-8596. The Welcome Desk at The Center of Clayton will also be notified of weather-related cancellations.
- A. The Athletics and Facilities Supervisor or their designee will be responsible for updating the hotline.
 - B. In the event of severe weather when the tennis center is open, announcements will be made to inform patrons of hazardous weather conditions when a “watch” is issued by the National Weather Service.
 - C. Patrons will be asked to move to emergency sites when “warnings” are issued.
 - D. In the case of inclement weather, only daily admissions purchased within 30 minutes of the inclement weather will be refunded. Patrons must bring their receipt to the cashier for refund.